IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1978

No. 78-241

ARPEJA-CALIFORNIA, INC.,

Petitioner,

v.

JARRET N. COHANE,

Respondent.

REPLY TO MEMORANDUM IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE DISTRICT OF COLUMBIA COURT OF APPEALS

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1. Jurisdiction.

The opposition suggests (pp. 1-2) that the judgment below may not be "final" within the meaning of 28 U.S.C. §1257. This suggestion has no merit. The Court below expressly held that jurisdiction existed under the District's long-arm statute so long as sales were made by petitioner in the District of Columbia even though there was no allegation by respondent that his claim for relief arose out of those sales (Appendix A p. 13a). And the respondent acknowledges (Opp. 4) that his contention

that the District of Columbia court has jurisdiction does not rest on any allegation that his claim for relief arose from sales made in the District of Columbia.[1] Accordingly, the court below has finally decided the federal question, i.e., whether a foreign corporation is subject to suit with respect to transactions that are unrelated to business done in the forum state.

This Court has repeatedly held that where a federal claim of lack of jurisdiction has been determined by a state court, that decision is "final" for the purposes of 28 U.S.C. §1257, even though the merits of the dispute under state law is still unresolved. *Mercantile Nat. Bank v. Langdeau*, 371 U.S. 555 (1963); *American Motorists Ins. Co. v. Starnes*, 425 U.S. 637 (1976); *Shaffer v. Heitner*, 433 U.S. 186 (1977). Cf. *Madruga v. Superior Court*, 346 U.S. 556 (1954); *Missouri ex rel. St. Louis, B. & M. R. Co. v. Taylor*, 266 U.S. 200 (1924). As stated in *Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469, 486 (1975), the rule that this Court will take jurisdiction where the federal question has been finally decided even if the case has still to be determined on non federal

[1] Respondent makes the feeble suggestion that "a completed trial record would benefit this Court . . . in judging whether Petitioner's contracts with the forum were such as to properly subject it to trial there." (Opp. p. 2 fn. 1.) But respondent did not contend below and does not represent here that his claim for relief is in any way based on sales in the District of Columbia. Moreover, the trial court after hearing respondent's evidence found that: "The relationship established by the contract and the parties thereto and its performance by the parties with the District of Columbia was minimal or insignificant" (App. 4a), and that there was a "lack of any significant relationship between the District of Columbia and the parties and the subject matter of the litigation" (App. 5a). Significantly, respondent makes no representation that it has additional evidence to offer on the issue of the relationship between his claim and the District of Columbia.

grounds "is consistent with the pragmatic approach that we followed in the past in determining finality." See Stern and Gressman, *Supreme Court Practice* (5th ed. 1978) 185.

The opposition further contends (p. 2) that permitting review from a denial of a motion to dismiss on jurisdictional grounds is somehow inconsistent with the rule of "finality". The identical contention was rejected by Justice Goldberg in chambers. Justice Goldberg read the cases in this Court as holding unequivocally that an assertion of in personam jurisdiction under the provisions of a state's long-arm statute against a claim of a denial of due process is a final judgment. *Rosenblatt v. American Cyanamid Corp.*, 15 L.Ed. 2d 39, 86 S.Ct. 1 (1965). And in *Mercantile Nat. Bank v. Langdeau, supra* at 558, the Court said: ". . . we believe it serves the policy underlying the requirement of finality in 28 U.S.C. §1257" to determine the question of jurisdiction rather than to submit the parties to litigation which "may all be for naught if consideration of the preliminary question of venue is postponed until the conclusion of the proceedings." So here, if jurisdiction in personam over the petitioner does not exist, there is no reason to require the petitioner's officers to come from California to the District of Columbia to try on the merits a fruitless litigation.

2. Importance of the Issue.

We stated in our petition that the issue presented in this case was important because it involved the construction and application of the District of Columbia's long-arm statute which is substantially the same as the long-arm statutes for most of the states throughout the country. The respondent replies with the frivolous argument that "no state is required to follow a decision of the

District of Columbia's Court of Appeals" (Opp. 5). But no state is bound to follow the decisions of the highest court of any other state. By the respondent's logic no decision of the highest court of any state would ever be sufficiently important to justify review by this Court.

Respectfully submitted,

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